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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/257,650	02/25/1999	MASAHIKO FUJINO	48194	2632
21874	7590	07/11/2006		
EDWARDS & ANGELL, LLP P.O. BOX 55874 BOSTON, MA 02205			EXAMINER SHAHER, SHULAMITH H	
			ART UNIT	PAPER NUMBER
			1647	

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/257,650

Applicant(s)

FUJINO, MASAHIKO

Examiner

Shulamith H. Shafer, Ph.D.

Art Unit

1647

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached. (See 37 CFR 1.116 and 41.33(a)).

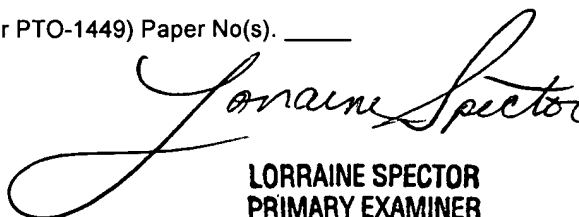
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 45-54 and 57.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
**LORRAINE SPECTOR  
PRIMARY EXAMINER**

The amendments to the claims submitted on 13 June 2006 will not be entered because, while the amended claims substantially reduce 112 2<sup>nd</sup> issues, the claims as amended raise new issues under 112 2<sup>nd</sup>.

Claim 47 is an incomplete sentence

Claims 48-50 fail to further limit independent claim 45.

Claim 52 is indefinite and potentially not further limiting.

112 1<sup>st</sup> issues still remain.

Applicants argue that the final rejection of 4/13/06 was improper as the claims introduced in response to the first office action (filed 17 January 2006) were examined on the merits only once.

Applicants' arguments have been fully considered but are not found to be persuasive for the following reasons: The rejections of the claims were necessitated by applicants' amendment. Therefore the finality of the rejection is entirely proper.

The traversal of rejection of Claims 45-54 under 102(b) as being anticipated by Birnbaumer et al., and Green et al. is based on new amendments to the claims. These amendments will not be entered; therefore the rejection is maintained. The traversal of rejection of Claims 45-51 and 54 under 102(b) as being anticipated by Kong et al is based on new amendments to the claims. These amendments will not be entered; therefore the rejection is maintained. The traversal of the rejection of claims 45-53 under 35 USC 103(a) as being unpatentable over Lebrun et al in view of Choong et al., and further in view of Dower et al is based on new amendments to the claims. These amendments will not be entered; therefore the rejection is maintained.

In the previous office action of 13 April 2006, the rejection of Claims 45-57 as being anticipated by Pietri-Rouxel et al. was mistakenly made under 102(b). This rejection should have been made under 102(a). Applicants have submitted a certified copy of translation of JP application 9-083758, filed 2 April, 1997. Priority is therefore granted to 2 April 1997, and the rejection of claims 45-57 as being anticipated by Pietri-Rouxel et al is withdrawn.

However, the newly submitted disclosure does not overcome the rejection of the claims under 112 1<sup>st</sup>.